

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

Crl.MC.No. 683 of 2007()

CC.55/2003 of JUDL.MAGISTRATE OF FIRST CLASS, KOYILANDY
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PETITIONER:

A.V.ABDURAHIMAN MUSALIYAR,
SECRETARY, DARUSSALAM ARABIC COLLEGE COMMITTEE
(REGD.) SOCIETY NO.54/76, NANDI P.O, KATALUR.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.SOJAN MICHEAL

RESPONDENTS:

1. THE STATE OF KERALA - REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. SYED ABDUL KHADER BAFACYH,
S/O.LATE SYED ABDUL RAHIMAN BAGAKYTH,
HILAL MANZIL, MAIN ROAD,
KOYILANDY.

R1 BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 683 OF 2007

Dated this the 28th day of March, 2007

ORDER

The petitioner is the sole accused in C.C.No.55/03 pending before the Judicial Magistrate of the First Class, Koyilandy. The 2nd respondent herein is the complainant. The complainant had filed a private complaint which was referred to the police under Sec.156(3) of the Cr.P.C. The police, after investigation, filed a negative final report. It is thereafter that the present protest complaint was filed by the 2nd respondent. Cognizance has been taken of the offences punishable, inter alia, under Sec.420 of the IPC.

2. The learned counsel for the petitioner narrates the tale of vows which the petitioner has been forced to endure from the year 2000 till now. The learned counsel for the petitioner submits that the proceedings against the petitioner is totally unjustified and amounts to abuse of process of the

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court. The continuation of the proceedings is working out miscarriage of justice against the petitioner. The petitioner is put to great prejudice, loss and suffering because of the undeserved pendency of the prosecution. The learned Magistrate is not taking up the matter for disposal. The complainant is making every endeavour to unnecessarily protract the proceedings. It is, in these circumstances, that the petitioner has come to this Court with a prayer that the powers under Sec.482 of the Cr.P.C. may be invoked to quash the proceedings.

3. I do note that the proceedings have been pending from 2000 though cognizance was taken only in 2003. I find no satisfactory reason to justify the invocation of the powers under Sec.482 of the Cr.P.C. at this belated hour. However, I do note that in all cases where cognizance is taken allegedly without sufficient justification, the accused has got a right to claim premature termination of the proceedings by discharge under Sec.245(2) or 245(1) of the Cr.P.C. The learned counsel for the petitioner submits that the petitioner is advised that it is not necessary to wait for the completion of the enquiry under Sec.244 of the Cr.P.C. and the petitioner will be justified in

claiming discharge under Sec.245(2) of the Cr.P.C. itself.

4. The mere fact that the accused may be entitled to discharge under Sec.245(1)/245(2) of the Cr.P.C. or acquittal later is by itself no reason for this Court to invoke its powers under Sec.482 of the Cr.P.C. especially in a case like the instant one where proceedings have been going on before the court below from the year 2000. However, I am satisfied that there is merit in the submission of the learned counsel for the petitioner that his claim for discharge under Sec.245(2) of the Cr.P.C. must be considered by the learned Magistrate expeditiously. I do further find merit in the submission of the learned counsel for the petitioner that till a decision is taken on the question whether the petitioner is entitled for discharge under Sec.245(2) of the Cr.P.C., it is not necessary to insist on the personal presence of the petitioner. The petitioner shall be entitled to be represented by a counsel until his plea that he is entitled for discharge under Sec.245(2) of the Cr.P.C. is considered and decided by the learned Magistrate. In view of the long pendency of the matter before the learned Magistrate, I am of opinion that it must be directed that if the petitioner files a petition claiming discharge under Sec.245(2) of the Cr.P.C., the

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learned Magistrate must proceed to consider such claim and pass appropriate orders expeditiously – at any rate, within a period of two months from the date on which such an application is filed.

5. With the above observations, this Crl.M.C. is dismissed.

**Sd/-
(R. BASANT, JUDGE)**

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P.S. to Judge